

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN**

FREEDOM FROM RELIGION
FOUNDATION, INC., ANNE NICOL
GAYLOR, ANNIE LAURIE GAYLOR,
PAUL GAYLOR, DAN BARKER,
PHYLLIS ROSE, and JILL DEAN,

Plaintiffs,

v.

PRESIDENT BARACK OBAMA,
WHITE HOUSE PRESS SECRETARY
ROBERT L. GIBBS, WISCONSIN GOVERNOR
JIM DOYLE, and SHIRLEY DOBSON,
CHAIRMAN OF THE NATIONAL DAY
OF PRAYER TASK FORCE,

Defendants.

Case No. 08-CV-588

**FEDERAL DEFENDANTS' STATEMENT OF PROPOSED FINDINGS OF FACT
AS TO WHICH THERE IS NO GENUINE ISSUE**

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, defendants President Barack Obama and White House Press Secretary Robert Gibbs ("federal defendants"), by their undersigned counsel, submit the following proposed findings of fact as to which there is no genuine issue in relation to their motion for summary judgment:

1. Anne Gaylor learned of President Obama's 2009 National Day of Prayer proclamation from her daughter, Annie Laurie Gaylor. Plaintiffs' Responses to Defendants President Barack Obama and Robert L. Gibbs' First Set of Interrogatories ("Interrogatory Answers") (Ex. E) No. 5, at 7.

2. Annie Laurie Gaylor actively monitored the White House website in advance of

President Obama's 2009 National Day of Prayer proclamation. Interrogatory Answers No. 5, at 7.

3. Annie Laurie Gaylor actively monitored the NDP Task Force website in advance of President Obama's 2009 National Day of Prayer proclamation. Interrogatory Answers No. 5, at 7.

4. Annie Laurie Gaylor verified the wording of President Obama's 2009 National Day of Prayer proclamation at the White House's website. Interrogatory Answers No. 5, at 8.

5. FFRF monitors the news under Annie Laurie Gaylor's direction, and looks for updates regarding the National Day of Prayer at the White House website, NDP Task Force website, and various governor websites. Interrogatory Answers No. 6, at 13.

6. Since 1990, Anne Gaylor has encouraged FFRF members actively to monitor and protest celebrations of the National Day of Prayer. Ex. F (Protest National Day of Prayer, Freethought Today, April 1990, at 16).

7. Paul Gaylor learned of President Obama's 2009 National Day of Prayer proclamation from Anne Gaylor. Interrogatory Answers No. 5, at 8.

8. Dan Barker has watched the National Day of Prayer over the course of several years due to his work at FFRF. Interrogatory Answers No. 4, at 7; Interrogatory Answers No. 5, at 8.

9. Dan Barker learned by watching the news on the internet on either May 7 or May 8, 2009 that President Obama had issued a National Day of Prayer proclamation on May 7, 2009. Interrogatory Answers No. 5, at 8.

10. Phyllis Rose learned of President Obama's 2009 National Day of Prayer Proclamation while working at FFRF. Interrogatory Answers No. 5, at 8.

11. Jill Dean has no specific recollection of President Obama's 2009 National Day of Prayer proclamation. Interrogatory Answers No. 5, at 8.

12. Anne Gaylor learned of President Bush's 2008 National Day of Prayer proclamation through her daughter, Annie Laurie Gaylor. Interrogatory Answers No. 4, at 5.

13. Annie Laurie Gaylor has routinely monitored the NDP Task Force website in the spring for many years. Interrogatory Answers No. 4, at 6.

14. Annie Laurie Gaylor corroborated President Bush's 2008 National Day of Prayer proclamation at the White House's website. Interrogatory Answers No. 4, at 6.

15. Annie Laurie Gaylor's usual practice is to corroborate National Day of Prayer proclamations at the White House's website. Interrogatory Answers No. 4, at 6.

16. Annie Laurie Gaylor has been on a "Focus on the Family" mailing list since sometime in the late 1980s or early 1990s, from which she receives annual mailings about the National Day of Prayer and the NDP Task Force. Interrogatory Answers No. 4, at 6.

17. Annie Laurie Gaylor routinely checks the NDP Task Force website every year. Interrogatory Answers No. 4, at 6.

18. Paul Gaylor learned of President Bush's 2008 National Day of Prayer proclamation through Anne Gaylor. Interrogatory Answers No. 4, at 6.

19. Dan Barker visited the NDP Task Force's website in 2008 to determine what wording they were recommending for National Day of Prayer proclamations. Interrogatory Answers No. 4, at 7.

20. Dan Barker learned by telephone from FFRF staff that President Bush issued a National Day of Prayer proclamation in 2008, and then searched the internet to determine whether President Bush had incorporated the NDP Task Force's theme "Prayer! America's Strength and Shield." Interrogatory Answers No. 4, at 7.

21. Phillys Rose learned of President Bush's 2008 National Day of Prayer proclamation while working at FFRF. Interrogatory Answers No. 4, at 7.

22. Jill Dean first became aware of President Bush's 2008 National Day of Prayer proclamation as a result of a prayer breakfast held in Burnett County, Wisconsin. Interrogatory Answers No. 4, at 7.

23. FFRF members have attended National Day of Prayer or related prayer breakfast events in order to monitor them. Interrogatory Answers No. 9, at 44.

24. FFRF members have picketed National Day of Prayer events held on courthouse steps or at municipal buildings. Interrogatory Answers No. 9, at 44.

25. FFRF members "greatly enjoy fighting back" against what they perceive to be Establishment Clause violations. Interrogatory Answers No. 6, at 12.

26. FFRF does not have any expenditures relating to the National Day of Prayer that are delineated by specific budgetary line items. Interrogatory Answers No. 7, at 39.

27. FFRF has no documents sufficient to disclose expenditures made by FFRF regarding the National Day of Prayer. Plaintiffs' Responses to Federal Defendants' First Request for Production of Documents No. 4, at 2 (Ex. I).

28. FFRF's purpose is to work for the separation of state and church and to educate the public on matters relating to nontheism. Ex. B (Welcome to the Freedom From Religion

Foundation webpage); Ex. C (Freedom From Religion Foundation pamphlet).

29. FFRF receives and acts on complaints of prayers in public programs. Ex. C (Freedom From Religion Foundation pamphlet).

30. FFRF generates significant publicity through its legal challenges. Ex. C (Freedom From Religion Foundation pamphlet).

31. Annie Laurie Gaylor views this lawsuit as “splashy.” Ex. H (Sept. 30, 2008 e-mail from Annie Laurie Gaylor to Jill Dean).

32. Annie Laurie Gaylor views this lawsuit as “highly educational.” Ex. H (Sept. 30, 2008 e-mail from Annie Laurie Gaylor to Jill Dean).

33. One of FFRF’s functions is to file lawsuits to correct what the organization perceives to be violations of the Establishment Clause. Ex. B (Welcome to the Freedom From Religion Foundation webpage).

34. One of FFRF’s organizational goals is to “make a legal fuss!” Ex. G (FFRF Fundraising Letter).

35. FFRF has used the existence of the National Day of Prayer lawsuit in its fundraising efforts. Ex. G (FFRF Fundraising Letter).

36. The first paragraph of President Obama’s 2009 National Day of Prayer proclamation acknowledges the historical role of prayer in American society. Ex. A (2009 Proclamation).

37. President Obama’s 2009 National Day of Prayer proclamation explicitly acknowledged the right of individuals to “worship or not worship according to the dictates of their conscience.” Ex. A (2009 Proclamation).

38. President Obama's 2009 National Day of Prayer proclamation did not incorporate the NDP Task Force's theme, "Prayer . . . America's Hope." Ex. A (2009 Proclamation); Ex. D (Feb. 17, 2009 Letter from Shirley Dobson to President Barack Obama).

39. President Obama did not host any public ceremonies at the White House in 2009 relating to the National Day of Prayer. Ex. J, at WH00053-WH00054 (May 5, 2009 White House Press Briefing Transcript).

Dated: October 9, 2009

Respectfully submitted,

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